



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Email: leg.council@legis.state.wi.us

DATE: February 14, 2000

TO: INTERESTED LEGISLATORS

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 730, Generally Relating to Creating a Local Professional Football Stadium District

This memorandum summarizes the major substantive provisions of 1999 Assembly Bill 730, generally relating to creating a local professional football stadium district. Also, since the proposed provisions of ch. 229, Stats., contained in the bill are modeled on similar statutory language relating to local professional baseball park districts, this memorandum will note some significant differences between the current provisions in ch. 229, Stats., and those proposed by Assembly Bill 730.

A. CREATION, ORGANIZATION AND JURISDICTION OF A LOCAL PROFESSIONAL STADIUM DISTRICT

Assembly Bill 730 creates a professional football stadium district ("district") in any county with a population of more than 150,000 that includes the principal site of a stadium with all of the following characteristics:

1. The stadium is home to a professional football team.
2. The stadium's home team is a member of a league of professional football teams having home stadiums in at least 10 states and a collective average attendance for all league members of at least 40,000 persons per game over the five years immediately preceding the year in which the district is created.
3. The stadium is approved by the league of professional football teams for use as a home stadium for the home professional football team. [See proposed ss. 229.822 (1) and 229.823, Stats.]

A district is to be governed by a seven-member board consisting of two persons appointed by the Governor (at least one of whom must reside in the county in which the stadium is located), two persons appointed by the chief elected official of the most populous city within the jurisdiction of the district and two persons appointed by the chief elected official of the county in which the football stadium is located. The seventh member of the board must be appointed by the chief elected official of a municipality, other than the most populous city in the jurisdiction, that has a boundary at the time of creation of the district that is contiguous to a boundary of the site of the football stadium. The Governor is required to select the chairperson of the district board and the district board must elect from its membership a vice chairperson, a secretary and a treasurer. [See proposed s. 229.822, Stats.]

B. POWERS OF A DISTRICT

Assembly Bill 730 grants to a district all of the powers necessary or convenient to carry out its purposes and the provisions of proposed subch. IV of ch. 229, Stats. The bill also affords specific authorization to a district, including the authority to:

1. Acquire, construct, equip, maintain, improve, operate and manage football stadium facilities as a revenue-generating enterprise or engage other persons to do these things.
2. Acquire, lease, use, transfer or accept transfers of property. (Under current law, a professional baseball park district may enter into a lease only by a supermajority vote of the district board. See s. 229.68 (4) (b), Stats.)
3. Issue revenue bonds. (Under current law, a professional baseball park district may issue bonds only upon a supermajority vote of the district board, upon an estimate of the cost of the baseball park facilities and if a lease agreement with a professional baseball team incorporates a term of at least 30 years. See s. 229.68 (8), Stats.)
4. Establish and collect fees or other charges for the right to purchase admission to events at the football stadium if the proceeds will be used for purposes related to football stadium facilities. (There is no comparable provision with respect to professional baseball park districts.)
5. Impose, by the adoption of a resolution, a 0.5% sales and use tax in the district. The tax must be at the rate of 0.5% and may not take effect until the resolution is approved by a majority of the electors in the district's jurisdiction voting on the resolution at a referendum. (Under current law, a professional baseball park district may impose a 0.1% tax upon a supermajority vote of the members of the district board and without submission of the proposal to the electors in the district. See s. 229.68 (15), Stats.)

[See proposed s. 229.824, Stats., and SECTIONS 31 to 37 of Assembly Bill 730. See also s. 229.682, Stats., which imposes special provisions on a professional baseball park district such as discount ticket days for residents of the district and contributions to youth organizations.]

C. BONDS AND BOND PROCEEDS

When a district issues bonds to raise funds for activities related to football facilities, it must designate one or more special redemption funds into which amounts are to be set aside for the payment of principal and interest due on the bonds. Assembly Bill 730 also provides that the district may designate one or more accounts in these funds as *special* debt service reserve funds. The special debt service reserve funds are subject to many conditions and may not secure more than \$160 million of bonding at any one time outstanding. With respect to the special debt service reserve funds, and *not* the so-called regular special redemption funds, Assembly Bill 730 provides that the state recognizes its moral obligation to make an appropriation to support the special debt service reserve fund to an appropriate level. In other words, a district may issue \$160 million worth of bonds backed by the state's moral pledge, but is not statutorily limited to issuing a specified amount of bonds that are not backed by the state's moral pledge. [See proposed s. 229.830, Stats., and SECTIONS 18 to 22 of Assembly Bill 730.]

The district's bonds will be repaid primarily from a special fund into which the district's sales tax revenues will be deposited. These moneys may be used *only* for purposes related to football stadium facilities. The term "football stadium" means an existing stadium or the site of a proposed home stadium. The term "football stadium facilities" includes practice facilities, parking lots and structures, garages, restaurants, parks, concession facilities, entertainment facilities, facilities for the display or sale of memorabilia, transportation facilities and other functionally related or auxiliary facilities or structures. [See proposed ss. 229.821 (6) and (7) and 229.825 (1), Stats.]

If a district's revenues exceed current debt service and operating requirements, the district *first* must apply the excess to fund a reserve for maintenance costs, depreciation and capital improvements and *second*, when the maintenance reserve is adequately funded, to retire issued bonds. When all of the bonds have been repaid and reserves for future obligations have been satisfied, the district must certify these facts to the Department of Revenue. Following this certification, the collection of the sales tax must cease. [See proposed s. 229.825 (2), Stats., and SECTION 33 of Assembly Bill 730.]

The district's bonds do not become the debt of the state or any county or municipality. The bonds are secured only by a district's interest in football stadium facilities, by income from these facilities, by proceeds of bonds, by gifts, loans or other aid and by sales tax revenues. [See proposed ss. 229.824 (16) and 229.831, Stats.]

D. TAX EXEMPTIONS

The interest earned on purchased district bonds is not subject to the state income tax. [See SECTIONS 24, 26, 27 and 28 of Assembly Bill 730.]

A district's income is exempt from the state income tax. [See SECTION 25 of Assembly Bill 730.]

The following items are exempt from the state's sales and use tax:

1. Parking or providing parking space for motor vehicles on property that is leased from a municipality or a district and leased to a professional football team or a related party. The term "related party" means a corporation or business entity owned, controlled or operated by, or under common control with, a professional football team.

2. Parking or providing parking space for motor vehicles on professional football game days under a contract between a municipality or a district and the owner of the property on which there is parking or parking space provided on professional football game days.

3. A license or other right to purchase admission to events at a football stadium that is granted by a municipality, a district or a professional football team or related party.

[See proposed s. 229.821 (12), Stats., and SECTION 29 of Assembly Bill 730. Proposed s. 229.826 (5), Stats., specifically provides that, with the agreement of a district, a county or municipality within a district's jurisdiction may impose a charge for the right to purchase admission to events at the football stadium, if the proceeds from any amount collected are used for purposes related to football stadium facilities. That is, a county or municipality may not impose a charge on tickets the proceeds of which are used to support general governmental functions. There is nothing comparable to this provision under current statutes relating to professional baseball park districts.]

Current law provides a property tax exemption to a sports and entertainment home stadium and the land on which it is located. [See s. 70.11 (36), Stats.]

E. CONTRACTING

A district is not subject to state purchasing requirements provided in subch. IV of ch. 16, Stats. Among other things, the provisions of ch. 16 regulate when competitive bidding is required and when a low bid must be accepted and describe certain preferences that must be observed. [See SECTION 3 of Assembly Bill 730.]

Unless a district determines that it is not feasible to do so, it must enter into a contract with a professional football team, or a related party, that requires the team or related party to acquire and construct football stadium facilities that are part of any facilities leased by the district to the team or to a related party. This must be done without regard to whether the football stadium facilities are financed by the district. [See proposed s. 229.827, Stats.]

Unlike the current statutes relating to professional baseball park districts, a district is not required to meet minority contracting goals. [See s. 229.70, Stats.]

Finally, a district need not require a prime contractor to provide or obtain a payment and performance bond or other payment assurance. [See SECTIONS 41, 42 and 43 of Assembly Bill 730.]

F. APPROPRIATIONS AND AIDS

The Department of Transportation may make aid payments to a district for the development, construction, reconstruction or improvement of bridges, highways, parking lots, garages, transportation facilities or other functionally related or auxiliary facilities or structures associated with a football stadium. The amount of these payments are not specified in the bill. [See SECTIONS 8, 9 and 38 of Assembly Bill 730.]

Of the revenues derived by a district through the imposition of the sales and use tax, 98.5% of the amount will be received by the district and 1.5% of the amount will be returned to the state to pay for administrative costs associated with the implementation of the tax. [See SECTIONS 8, 10, 11 and 36 of Assembly Bill 730.]

G. LEGISLATIVE AUDIT BUREAU AND ETHICS

The Legislative Audit Bureau is authorized to audit the records of a district. In addition, the Legislative Audit Bureau must submit a report to the Joint Committee on Finance regarding the financial status of a district at the end of each biennium in which there are outstanding bonds or notes issued by a district. [See SECTIONS 1 and 2 of Assembly Bill 730.]

A member of a district board is not considered a state public official under the state's ethics code, but is considered a local public official for purposes of the code of ethics for local governmental officials, employees and candidates. A local public official may not use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family or for an organization with which he or she is associated. A violation of this provision includes the acceptance of free or discounted admissions to a professional football game by a member of the district. [See SECTIONS 5, 6 and 7 of Assembly Bill 730.]

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DATE: March 15, 2000

TO: SENATORS RUSSELL DECKER, CHARLES CHVALA AND JON ERPENBACH

FROM: William Ford, Senior Staff Attorney

SUBJECT: Summary of LRB-0376/2, Relating to the Authority of Certain Counties to Issue Bonds or Promissory Notes for the Construction or Renovation of Football Stadium Facilities

This memorandum, which was prepared at your request, summarizes LRB-0376/2 ("the draft") which is an unIntroduced Senate Substitute Amendment to 1999 Senate Bill 384, relating to the renovation of football stadium facilities. The section numbers referred to in the text of this memorandum refer to the section of the draft where the provision being discussed can be found. For purposes of readability, the memorandum refers to Brown County even though the draft would apply to any county with a population of 150,000 that contains a "professional football facility."

A. BONDING AUTHORIZED IF APPROVED IN REFERENDUM

The draft authorizes Brown County to issue general obligation bonds or promissory notes for purposes related to football stadium facilities, if the county board enacts an ordinance authorizing the issuance of the bonds and if the county board's ordinance is approved in a county referendum. The referendum is required to be held at the September primary that occurs at least 45 days after the ordinance is enacted. The ballot question is required to be specified by the county board. The draft provides that the aggregate amount of bonds or promissory notes issued for purposes related to football stadium facilities may not exceed \$160 million. [SECTION 8.]

B. SALES AND USE TAXES

The draft provides no new authorization to impose sales and use taxes for the purposes of renovating Lambeau Field. Under subch. V of ch. 77, Stats., counties are authorized to impose a 0.5% sales and use tax. The sales and use tax rate is required to be 0.5% and is required to be imposed upon all sales of tangible personal property and services that are subject to the state sales and use tax. Because Brown County does not currently impose a county sales and use tax,

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Brown County could decide to impose such a tax and use some or all of the revenues from the tax to help offset any costs the county might incur in the renovation of Lambeau Field.

Section 77.70, Stats., requires that the county sales and use tax be imposed "only for the purpose of directly reducing the property tax levy . . ." It appears that, if Brown County were to issue bonds for the renovation of Lambeau Field, a subsequently enacted county sales and use tax would serve to reduce the property tax levy. This is because the debt service on the bonds would be paid from property tax revenues and the subsequently enacted sales tax would reduce the property tax levy.

C. TAX EXEMPTIONS

*exempt
levy limit*
The draft provides that interest earned on bonds issued by Brown County for purposes related to football stadium facilities are exempt from state income taxation. [SECTIONS 9, 10 and 11.] In addition, *under current law*, the gross receipts from the sale of building materials, supplies and equipment to owners, contractors, subcontractors or builders of a football stadium facility would be exempt from the sales tax. [s. 77.54 (41), Stats.] Also, *under current law*, property consisting of or contained in a sports and entertainment home stadium (including Lambeau Field), including while the facility is being built, that is constructed by, leased to or primarily used by a professional athletic team and the land upon which that stadium and those structures and facilities are located is exempt from property taxation. Exempt property includes parking lots, garages, restaurants, parks, concession facilities, entertainment facilities, transportation facilities and other functionally related or auxiliary facilities and structures. [s. 70.11 (36), Stats.]

D. PARTICIPATION OF MINORITIES AND WOMEN IN RENOVATION OF THE PROFESSIONAL FOOTBALL STADIUM FACILITY

The draft requires Brown County to ensure that, for construction or renovation work and professional services contracts that relate to the construction or renovation of Lambeau Field that are financed by the proceeds of bonds or promissory notes issued under the authority of the draft, a person who is awarded the contract by the county shall agree, as a condition to receiving the contract, that his or her goal shall be to ensure that at least 25% of the employees hired because of the contract will be minority group members and at least 5% of the employees hired because of the contract will be women. [SECTION 8.]

E. PREVAILING WAGES

The draft provides that the construction or renovation of Lambeau Field, whether carried out by the county, a municipality, a professional football team or an entity related to a professional football team, is subject to the prevailing wage law contained in s. 66.293, Stats. The prevailing wage law, in part, requires a contractor or subcontractor to pay the prevailing rate of wages determined by the Department of Workforce Development and to pay at least 1-1/2 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor. [SECTIONS 1 through 6.]

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

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DATE: March 14, 2000

TO: REPRESENTATIVES BOB ZIEGELBAUER AND DAVID CULLEN

FROM: William Ford, Senior Staff Attorney

SUBJECT: Authority of Brown County to Participate in the Renovation of Lambeau Field

INTRODUCTION

This memorandum is in response to your question of whether, under current law, Brown County has statutory authority to participate in the renovation of Lambeau Field for the Green Bay Packers by engaging in renovation construction activities, issuing bonds and imposing a sales and use tax. As will be explained in more detail below, the answer to your question is "yes." The memorandum also describes some ideas you are considering for legislation to assist activities Brown County may choose to engage in for the renovation of Lambeau Field.

A. AUTHORITY TO ENGAGE IN RENOVATION ACTIVITIES

Current law authorizes a county board to enter a cooperative agreement under s. 66.30, Stats., with municipalities (cities, villages and towns) and the state (and other counties) to acquire, develop, remodel, construct, equip, operate and maintain land, buildings and facilities for regional projects. [s. 59.52 (7), Stats. (copy attached).] Although the term "regional projects" is not defined in the statute, it would appear to encompass projects such as the renovation of Lambeau Field where the public benefits of the renovation extend to more than one city, village or town. In addition, it would be possible to amend s. 59.52 (7), Stats., to explicitly state that the renovation project is a "regional project" for purposes of s. 59.52 (7), Stats. In my opinion, amending the statute in this manner is not necessary but might alleviate any uncertainty about the county's authority to participate in the renovation of Lambeau Field.

Because Lambeau Field is currently (and in the future presumably will be) owned by the City of Green Bay, the authority under s. 59.52 (7), Stats., for the county to enter a cooperative agreement with the City of Green Bay to renovate Lambeau Field would appear to be an appropriate vehicle if Brown County chooses to do so.

B. BONDING AUTHORITY

Section 67.04 (2) (a), Stats., authorizes any municipality (including counties) to borrow money and issue general obligation bonds to finance any project undertaken for a public purpose. "Project" is defined to include the acquisition, leasing, planning, design, construction, development, extension, enlargement, repair or improvement of land, property, buildings, equipment or facilities. [s. 67.04 (1) (ar), Stats.] "Public purpose" is defined to mean the performance of any power or duty of the municipality. Therefore, s. 67.04 (2) (ar), Stats., provides authority for Brown County to borrow to provide financial support for the renovation of Lambeau Field if it chooses to do so.

As you suggested, the following are some issues that could be addressed by amending the statute or creating session laws to augment Brown County's authority to issue bonds for the renovation of Lambeau Field.

1. Enact a statement of legislative intent stating that the Legislature finds that financial and other assistance by Brown County to renovate Lambeau Field is a public purpose of the county. This statement, while probably not necessary, would help a court determine that financial help by the county is consistent with the public purpose doctrine of the Wisconsin Constitution. [See, e.g., the Wisconsin Supreme Court's reliance on the legislative statement of public purpose in *Libertarian Party v. State*, 199 Wis. 2d 790 (1996).]

2. Provide that the interest earned on bonds issued by Brown County for the renovation of Lambeau Field are not subject to state income taxation. [1999 Assembly Bill 730 and Senate Bill 384 contain these exemptions.]

3. Provide that Brown County may borrow and issue bonds for the renovation of Lambeau Field only in an amount approved by the electors in a county referendum. Because Brown County would exceed the statutory county debt levy rate limit under s. 66.77 (1) (b), Stats., the debt issuance would have to be approved in a county referendum, approved by a 3/4 vote of the county board, or be found to be a regional project. Therefore, providing for a county-wide referendum for issuance of bonds would be a way of satisfying the requirements for bond issuance that exceed debt levy limits.

C. COUNTY SALES AND USE TAX

Under subch. V of ch. 77, Stats., counties are authorized to impose a 0.5% sales and use tax. The sales and use tax rate is required to be 0.5% and is required to be imposed upon all sales of tangible personal property and services that are subject to the state sales and use tax. Brown County does not impose a county sales and use tax as of the date of this memorandum. Therefore, Brown County has existing authority to impose a sales and use tax.

Section 77.70, Stats., requires that the county sales and use taxes be imposed "only for the purpose of directly reducing the property tax levy. . . ." Therefore, in at least a nominal sense, Brown County would have to pay any renovation costs for Lambeau Field out of its property tax revenues although sales and use tax revenues could be used to pay for expenses that would otherwise be paid with property tax revenues.

It can be argued that, if Brown County were to issue bonds for the renovation of Lambeau Field, a subsequently enacted county sales and use tax would serve to reduce the property tax levy. This is because the debt service on the bonds would be paid from property tax revenues and the subsequently enacted sales tax would reduce the property tax levy.

However, as a means of assuring that a county sales and use tax could be used to finance the renovation of Lambeau Field, you have proposed to amend s. 77.70, Stats., to allow counties that contain a professional football stadium to use sales and use tax revenues for the purposes of stadium renovation as well as for direct property tax relief.

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

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Attachment



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: March 20, 2000

TO: SENATORS RUSSELL DECKER, CHARLES CHVALA AND
JON ERPENBACH

FROM: William Ford, Senior Staff Attorney

SUBJECT: Summary of LRB-4789/1 and LRB-4686/2, Relating to the Authority of
Brown County to Participate in the Renovation of Lambeau Field

A. INTRODUCTION

This memorandum, which was prepared at your request, summarizes LRB-4789/1 ("the draft") which is an unIntroduced bill, relating to the renovation of football stadium facilities. The memorandum also summarizes provisions of *current law* which are relevant to county authority to provide financial support for the renovation of football stadium facilities. In addition, the memorandum provides a brief summary of LRB-4686/2 ("the draft"), which is an unIntroduced bill providing additional financing mechanisms for the renovation of Lambeau Field and exempting interest earned on certain bonds issued by Brown County from state income taxation. For purposes of readability, the memorandum specifically refers to Brown County and Lambeau Field even though the drafts would apply to any county with a population of 150,000 that contains a "professional football stadium facility."

B. LRB-4789/1

1. Bonding Authorized if Approved in Referendum

The draft authorizes Brown County to issue general obligation bonds or promissory notes for purposes related to football stadium facilities, if the county board enacts an ordinance authorizing the issuance of the bonds and if the county board's ordinance is approved in a county referendum. The referendum is required to be held at the September primary that occurs at least 45 days after the ordinance is enacted. The ballot question is required to be specified by the county board. The draft provides that the aggregate amount of bonds or promissory notes issued for purposes related to football stadium facilities may not exceed \$160 million.

2. Sales and Use Taxes

The draft provides no new authorization to impose sales and use taxes for the purposes of renovating Lambeau Field. Under subch. V of ch. 77, Stats., counties are authorized to impose a 0.5% sales and use tax. The sales and use tax rate is required to be 0.5% and is required to be imposed upon all sales of tangible personal property and services that are subject to the state sales and use tax. Because Brown County does not currently impose a county sales and use tax, Brown County could decide to impose such a tax and use some or all of the revenues from the tax to help offset any costs the county might incur in the renovation of Lambeau Field.

Section 77.70, Stats., requires that the county sales and use tax be imposed "only for the purpose of directly reducing the property tax levy" It appears that, if Brown County were to issue bonds for the renovation of Lambeau Field, a subsequently enacted county sales and use tax would serve to reduce the property tax levy. This is because the debt service on the bonds would be paid from property tax revenues and the subsequently enacted sales tax would reduce the property tax levy.

3. Tax Exemptions

Under current law, the gross receipts from the sale of building materials, supplies and equipment to owners, contractors, subcontractors or builders of a football stadium facility would be exempt from the sales tax. [s. 77.54 (41), Stats.] Also, *under current law*, property consisting of or contained in a sports and entertainment home stadium (including Lambeau Field), including while the facility is being built, that is constructed by, leased to or primarily used by a professional athletic team and the land upon which that stadium and those structures and facilities are located is exempt from property taxation. Exempt property includes parking lots, garages, restaurants, parks, concession facilities, entertainment facilities, transportation facilities and other functionally related or auxiliary facilities and structures. [s. 70.11 (36), Stats.]

4. Participation of Minorities and Women in Renovation of the Professional Football Stadium Facility

The draft requires Brown County to ensure that, for construction or renovation work and professional services contracts that relate to the construction or renovation of Lambeau Field that are financed by the proceeds of bonds or promissory notes issued under the authority of the draft, a person who is awarded the contract by the county shall agree, as a condition to receiving the contract, that his or her goal shall be to ensure that at least 25% of the employees hired because of the contract will be minority group members and at least 5% of the employees hired because of the contract will be women.

5. Prevailing Wages

The draft provides that the construction or renovation of Lambeau Field, whether carried out by the county, a municipality, a professional football team or an entity related to a professional football team, is subject to the prevailing wage law contained in s. 66.293, Stats. The prevailing wage law, in part, requires a contractor or subcontractor to pay the prevailing rate of

wages determined by the Department of Workforce Development and to pay at least 1-1/2 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor.

**C. LRB-4686/2. AUTHORIZING SPECIAL LICENSE PLATES.
COMMEMORATIVE BRICKS AND PROVIDING AN INCOME TAX EXEMPTION
ON BOND INTEREST**

LRB-4686/2 is an unIntroduced bill that would:

1. Authorize the Department of Transportation to issue special Green Bay Packer motor vehicle license plates. Persons who choose to purchase such plates would pay an additional \$25 fee annually, which would be dedicated to fund the construction or renovation of Lambeau Field.
2. Authorize Brown County to enter into an agreement with the Green Bay Packers in which the Packers would sell commemorative bricks and tiles to be displayed at Lambeau Field. The proceeds from the sale of these bricks and tiles, which would be sold to both individuals and organizations, would be dedicated to fund the renovation and construction costs of Lambeau Field.
3. Exempt, from the state income tax, interest earned on bonds issued by Brown County for purposes related to football stadium facilities.

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

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